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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,703	03/19/2001	Terrance Moore	24996	9723

7590

09/12/2006

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EXAMINER

FRENEL, VANEL

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/812,703	MOORE ET AL.	
	Examiner	Art Unit	
	Vanel Frenel	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the After-Final filed on 8/3/06. Claims 1-20 are pending.
2. The After-Final filed on 8/3/06 by the applicant's has been persuasive, therefore the previous Final Rejection has been withdrawn and a new Office Action is hereby presented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Changing Physician Behavior Is Tool to Reduce Health Care Costs by Rosenstein, Alan H., Shulkin, David. Health Care Strategic Management. Chicago: Sep 1991. Vol.9, Iss.9; pg.14, 3 pgs in view of Leet (6,000,828).

(A) As per claim 1, Rosenstein discloses a method of collecting fees for managing and optimizing the profitability of a plurality of physicians in a healthcare practice participating in an insurance network (See Rosenstein, Page 1, Paragraph 1), the method comprising the steps of:

establishing a relationship between a healthcare consultation group and the healthcare practice participating in the insurance network to increase the plurality of physicians' profitability by reducing a risk of the healthcare practice not receiving a predetermined reimbursement amount for ancillary medical costs from the insurance network (See Rosenstein, Page 1, Paragraphs 6- 8);

funding an incentive pool (See Rosenstein, Page 1, Paragraph 6);

gathering data in tangible computer medium from each of the plurality of physicians in the healthcare practice participating in the insurance network regarding management of ancillary medical costs (See Rosenstein, Page 1, Paragraphs 6-10);

paying funds from the funded incentive pool to the healthcare practice participating in the insurance network when the ancillary medical costs of the plurality of physicians in the healthcare practice do not decrease to a preselected level over a preselected period of time (See Rosentein Page 3, Paragraphs 4-9); and

distributing predetermined percentages of savings attributed to the modifying behavior of the plurality of physicians ancillary medical cost management (See Rosenstein, Page 2, Paragraphs 4-10).

Rosenstein does not explicitly disclose that the method having modifying behavior of at least one of the plurality of physicians in the healthcare practice for management of the ancillary medical costs responsive to the data gathered in the tangible computer medium.

However this feature is well known in the art, as evidenced by Leet. In particular, Leet suggests that the method having modifying behavior of at least one of the plurality

of physicians in the healthcare practice for management of the ancillary medical costs responsive to the data gathered in the tangible computer medium (See Leet, Col.15, lines 11-28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Leet within the system of Rosenstein with the motivation of displaying comparative costs, in association with the recommended treatments (See Leet, Col.3, lines 42-43).

(B) As per claim 2, Rosenstein discloses the method wherein the step of distributing the predetermined percentages of the savings includes dividing the savings into selected percentages between at least two of the healthcare consultation group, the healthcare practice, and the insurance network and distributing the savings to the at least two of the healthcare consultation group, the healthcare practice and the insurance network base on the selected percentages (See Rosenstein, Page 2, Paragraphs 6-7).

(C) As per claim 3, Rosenstein discloses the method further comprising collecting the step of collecting no fee by the healthcare consultation group if the healthcare practice does not reduce the ancillary medical costs to the preselected level over the predetermined period of time (See Rosenstein Page 3, Paragraphs 7-9).

(D) As per claim 4, Rosenstein discloses the method wherein each of the respective predetermined percentages of savings distributed to the healthcare consultation group and the healthcare practice are greater than the predetermined percentage of the savings distributed to the insurance network (See Rosenstein, Page 2, Paragraphs 6-8), and wherein the step of funding the incentive pool includes the healthcare consultation group funding the incentive pool (Page4, Paragraphs 15-17).

(E) As per claim 5, Rosenstein discloses the method further comprising the step of providing a billing fee structure from the healthcare consultation group wherein the savings are calculated by subtracting current ancillary medical costs from predetermined baseline ancillary medical costs (Page 3, Paragraphs 3-4).

(F) As per claim 6, Rosenstein discloses the method further comprising the step of calculating the billing fee structure for the healthcare consultation group by multiplying a predetermined percentage of the savings by the number of patients participating in the healthcare practice (Page 3, Paragraphs 6-10; Page 4, Paragraphs 9-10).

(G) As per claim 7, Rosenstein discloses the method wherein the ancillary medical costs include any costs taken from the group of pharmacy, radiology, laboratory, anesthesiology, occupational therapy, physical therapy, speech therapy, therapeutic radiology, operating room, or emergency room costs (Page 4, Paragraphs 13-15).

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(H) As per claim 8, Rosenstein discloses a method of collecting fees for managing a plurality of physicians in a healthcare practice participating in an insurance network (See Rosenstein, Page 1, Paragraph 1), the method comprising the steps of:

establishing a relationship between a healthcare consultation group and the healthcare practice participating in the insurance network to reduce a risk of the healthcare practice not receiving a predetermined reimbursement amount for ancillary medical costs for the insurance network (See Rosenstein, Page 1, Paragraphs 6- 8); funding an incentive pool (See Rosenstein, Page 1, Paragraph 6);

establishing a plan to pay funds from the funded incentive pool to the healthcare practice participating in the insurance network, wherein the payment of funds occurs in the plan when the ancillary medical costs of the plurality of physicians in the healthcare practice do not decrease to a preselected level over a preselected period of time (See Rosentein Page 3, Paragraphs 4-9);

gathering data in tangible computer medium from each of the plurality of physicians in the healthcare practice participating in the insurance network regarding management of ancillary medical costs (See Rosenstein, Page 1, Paragraphs 6-10); and distributing predetermined percentages of savings attributed to the modifying behavior of the plurality of physicians' ancillary medical cost management if the ancillary medical costs decrease to the preselected level over the preselected period of time (See Rosentein Page 3, Paragraphs 4-9).

Rosenstein does not explicitly disclose that the method having modifying behavior of at least one of the plurality of physicians in the healthcare practice for

management of the ancillary medical costs responsive to the data gathered in the tangible computer medium.

However this feature is known in the art, as evidenced by Leet. In particular, Leet suggests that the method having modifying behavior of at least one of the plurality of physicians in the healthcare practice for management of the ancillary medical costs responsive to the data gathered in the tangible computer medium (See Leet, Col.15, lines 11-28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Leet within the system of Rosenstein with the motivation of displaying comparative costs, in association with the recommended treatments (See Leet, Col.3, lines 42-43).

(I) As per claim 9, Rosenstein discloses the method wherein the step of funding the incentive pool includes the healthcare consultation group funding the incentive pool, wherein the modifying behavior of the plurality of physicians is responsive to recommendations of the healthcare consultation group, and the method further comprising the step of paying funds from the funded incentive pool only if the ancillary medical costs of the plurality of physicians in the healthcare practice do not decrease to a preselected level over a preselected period of time responsive to the modifying behavior (Page 2, Paragraphs 8-11).

(J) As per claim 10, Rosenstein discloses the method wherein the step of distributing the predetermined percentages of the savings includes dividing the savings into selected percentages between at least two of the healthcare consultation group, the healthcare practice, and the insurance network base on the selected percentages (Page 2, Paragraphs 7-12).

(K) As per claim 11, Rosenstein discloses the method further comprising the steps of collecting no fee by the healthcare consultation group if the healthcare practice does not reduce the ancillary medical costs to the preselected level over the predetermined period of time and providing a billing fee structure from the healthcare consultation group wherein the savings are calculated by subtracting current ancillary costs from predetermined baseline ancillary medical costs (Page 3, Paragraphs 3-7).

(L) As per claim 12, Leet discloses the method wherein each of the respective predetermined percentages of savings distributed to the healthcare consultation group and the healthcare practice are greater than the predetermined percentage of the savings distributed to the insurance network, and wherein the ancillary medical costs include any costs taken from the group of pharmacy, radiology, laboratory, anesthesiology, occupational therapy, physical therapy, speech therapy, therapeutic radiology, operating room, or emergency room costs (See Leet, Col.18, lines 49-67).

The motivation for combining the respective teachings of Rosenstein and Leet are as discussed in the rejection of claim 1, and incorporated herein.

(M) As per claim 13, Rosenstein discloses a method of collecting fees for managing and optimizing the profitability of an insurance network having a plurality of physicians in a healthcare practice participating therein (See Rosenstein, Page 1, Paragraph 1), the method comprising the steps of:

establishing a relationship between a healthcare consultation group and the healthcare practice participating in the insurance network to increase the insurance network's profitability by limiting the plurality of physicians' ancillary medical cost management behavior that is not preferred by the insurance network (See Rosenstein, Page 1, Paragraph 6);

gathering data in tangible computer medium from each of the plurality of physicians in the healthcare practice participating in the insurance network regarding management of ancillary medical costs (See Rosenstein, Page 1, Paragraphs 6-10);

modifying behavior of at least one of the plurality of physicians in the healthcare practice for management of the ancillary medical costs responsive to the data gathered in a tangible computer medium; and

distributing predetermined percentages of savings attributed to the modifying behavior of the plurality of physicians' ancillary medical cost management to at least one of the insurance network and the healthcare management consultation group when the ancillary medical costs decrease to a preselected level over a preselected period of time (See Rosentein Page 3, Paragraphs 4-9).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Leet within the system of Rosenstein with the motivation of displaying comparative costs, in association with the recommended treatments (See Leet, Col.3, lines 42-43).

(N) As per claim 14, Rosenstein discloses the method further comprising funding an incentive pool to be paid to the insurance network when the modified medical management practices do not decrease ancillary medical costs of the insurance network to a preselected level over a preselected period of time (See Rosenstein, Page 3, Paragraphs 3-7).

(O) As per claim 15, Rosenstein discloses the method wherein the step of distributing the predetermined percentages of the savings includes dividing the savings into selected percentages between at least two of the healthcare management consultation group, the healthcare practice, and the insurance network and distributing the savings to the at least two of the healthcare consultation group, the healthcare practice and the insurance network base on the selected percentages (See Rosenstein, Page 2, Paragraphs 2-8).

(P) As per claim 16, Rosenstein discloses the method further comprising the steps of collecting no fee by the healthcare consultation group if the insurance network does not

decrease ancillary medical costs to the preselected level over the preselected period of time (See Rosenstein, Page 3, Paragraphs 3-7).

(Q) As per claim 17, Rosenstein discloses the method wherein each of the respective predetermined percentages of savings distributed to the healthcare consultation group and the insurance network are greater than the predetermined percentage of the savings distributed to the healthcare practice (See Rosenstein, Page 4, Paragraphs 5-11).

(R) As per claim 18, Rosenstein discloses the method further comprising the step of providing a billing fee structure from the healthcare consultation group wherein the savings are calculated by subtracting current ancillary medical costs from predetermined ancillary medical costs (See Rosenstein, Page 3, Paragraphs 3-4).

(S) As per claim 19, Rosenstein discloses the method further comprising the step of calculating the billing fee structure for the healthcare consultation group by multiplying a predetermined percentage of the savings by the number of patients participating in the healthcare practice (See Rosenstein, Page 3, Paragraphs 6-10; Page 4, Paragraphs 9-10).

(T) As per claim 20, Leet discloses the method wherein the ancillary medical costs include any costs taken from the group of pharmacy, radiology, laboratory,

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anesthesiology, occupational therapy, physical therapy, speech therapy, therapeutic radiology, operating room, or emergency room costs (See Leet, Col.18, lines 49-67).

The motivation for combining the respective teachings of Rosenstein and Leet are as discussed in the rejection of claim 1, and incorporated herein.

Response to Arguments

4. Applicant's arguments with filed on 02/28/05 with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied teaches method and apparatus for personalized medical prescription services (2002/0138303) and system and method of collecting and populating a database with physician/patient data for processing to improve practice quality and healthcare delivery (6,151,581).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on Monday-Thursday from 6:30 am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

V.F

V.F

September 4, 2006

Robert Morgan
Robert Morgan
Patent Examiner
Art Unit 3626